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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,904	01/30/2002	Laura V. West	1324035	1919

7590 11/26/2004

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT PAPER NUMBER

3732

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

ds

<b>Office Action Summary</b>	<b>Application No.</b> 10/060,904	<b>Applicant(s)</b> WEST ET AL.	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 31 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-20 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "may be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-8, 10-11, 13, 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson.

With regard to claims 1-2, Johnson discloses a hair clip (figs. 1-7) comprising two outermost fingers (11, 12) and a plurality of intermediate fingers (19), each finger having a tip end and a second base end (fig. 1), the fingers lying adjacent each other side by side in a single plane (fig. 8 shows how the device being used), each finger linked to an

adjacent finger by a hinge means (pin 16 connect the fingers as hinge) locating proximate the second end of each finger (fig. 1); In regard to claim 4, a tension means being a tension spring (17) locating proximate the second end, the tensioning means biasing the tip end of the fingers in a closed position (fig. 1). In regard to claims 5-8, the tensioning means being positioned around outside of all the fingers and being anchored to the outermost fingers (fig. 5a); each of the intermediate fingers (19) has an opening (28, 29 fig. 2) therethrough proximate the second end and in line with the opening adjacent finger, wherein the tensioning means being positioned through the adjacent openings in the intermediate fingers (fig. 7) also the underside of each finger having a slot (15) in line the recessed slot (29) in adjacent fingers (fig. 7). In regard to claim 10, the tensioning means positioned between the hinge and the first tip end of the fingers (fig. 5 shows the upper part of the tension spring 17 being between the hinge (16) and the first tip end of the fingers). In regard to claim 11, the tensioning means being anchored by a peg (16). In regard to claim 13, the adjacent sides (20) of two or more fingers (19) including a plurality of projections/indents (45 fig. 3), wherein a projection on one finger interlocks with an indent on the adjacent finger (2a). In regard to claim 15, the indents are openings (fig. 3 shows hooks 45 with openings) configured to receive a corresponding projection in the opposite side surface of an adjacent finger (fig. 2a). In regard to claims 16-18, each finger and at least the outermost fingers having handles (18) which extend from the second end of at least the outermost fingers (fig. 1).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

With regard to claim 14, Johnson discloses a hair device comprising all the claimed limitations in claim 13 as discussed above except for at least two projections/indents (openings) on each finger. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to have at least two projections/indents (openings) on each finger, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Claims 12 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

With regard to claims 12 and 19-20, Johnson discloses a hair device comprising all the claimed limitations in claims 1 and 16 as discussed above except for the fingers having a shape such that the at least underside surface of the clip accords to a section of the outside surface of a sphere approximating the dimensions of an adults human cranium; the handles being removable and of various colors on their surface. It would

have been obvious to one having an ordinary skill in the art at the time the invention was made to construct for the fingers having a shape such that the at least underside surface of the clip accords to a section of the outside surface of a sphere approximating the dimensions of an adults human cranium and the handles with various colors, since such modifications would involve a mere change in the shape, color of a component and it would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the handles being removable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Lazzaro (4270554).

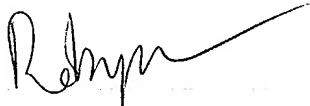
With regard to claim 9, Johnson discloses a hair device comprising all the claimed limitations in claim 10 as discussed above except for the tensioning means being coated. Lazzaro discloses a hair clip (fig. 3) comprising a spring metal coated with a plastic material (col. 2, lines 27-30). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ a coated material as taught by Lazzaro into the tensioning means of Johnson for the intended use purpose.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

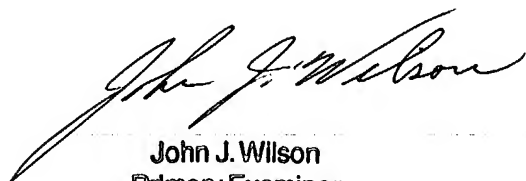
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
Examiner  
November 17, 2004



John J. Wilson  
Primary Examiner